Opacity rules have finally been adopted.
They will be formally filed on ...

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Air & Radiation Branch
U.S. EPA Region V

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1988

IN THE MATTER OF:)
)
PARTICULATE EMISSION LIMITATIONS,) R82-1 (Docket B)
RULE 203(g)(1) AND 202(b) OF)
CHAPTER 2)

ADOPTED RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This Opinion and Order brings to a close a long and complicated rulemaking proceeding. Early procedural activities are set forth in the Board's Final Opinion and Order dated July 2, 1986 in R82-1(Docket A): Particulates. On March 14, 1986, the Board adopted an Interim Order in R82-1 separating that proceeding into two dockets: Docket A: Particulates and Docket B: Opacity. At that time the Board intended to proceed to second notice on the particulate rules while further considering the opacity rules. However, the Joint Committee on Administrative Rules (JCAR) refused to allow the Board to proceed in that manner. Therefore, on May 9, 1986, the Board adopted a Fourth Second Notice order including both the opacity and the particulate rules.

Second notice was received by JCAR on May 16, 1986, and was considered by JCAR on June 23, 1986, at which time it objected to each of the opacity rules but none of the particulate rules. In response the Board determined that it would withdraw the opacity rules but proceed to adopt and file the particulate rules. The Board adopted a Resolution and Order to that effect on July 2, 1986, and indicated that a new first notice order would be adopted concerning the opacity rules in the near future under Docket B. On August 14, 1986, the Board adopted a Third First Notice Order. As more than one year passed since the date of that first notice, Section 5.01(d) of the Illinois Administrative Procedure Act (APA) precluded the rule from being adopted, or from being filed with the Secretary of State. Therefore, the Board sent the proposed rules to Fourth First Notice on December 17, 1987.

In the interest of expediency, the Board adopted for Fourth First Notice the same proposal as was adopted for Third First Notice -- but with a few amendments. First, in its comments, the Agency suggested certain revisions to Section 212.124(d), the defense provision, based on issues that arose at hearing. The Agency stated its position that the record does not support extending the Adjusted Opacity Standards Procedures to "process sources" and offered revised language.

Also, the Board proposed a Subpart E to 35 Ill. Adm. Code 106 entitled "Air Adjusted Standards Procedures". Proposed Subpart E is similar to 35 Ill. Adm. Code 106. Subpart D, which relates to RCRA adjusted standards procedures. The sections which comprise Subpart E are generic procedural rules which the Board will reference whenever adjusted standards procedures are provided for in the Board's air pollution regulations. The Board believes that a separate Subpart for air adjusted standard procedures is appropriate to address the particular requirements associated with the air regulations. Accordingly, those provisions previously set forth in Section 212.126 which address generic procedures are now located in 35 Ill. Adm. Code 106. Subpart E.

Fourth First Notice was published at 12 Ill. Reg. 1722, 1729, January 15, 1988. The first notice comment period concluded on March 2, 1988. The Illinois Environmental Protection Agency (Agency) submitted the only comment during the Fourth First Notice on February 26, 1988. On March 21, 1988, the Department of Commerce and Community Affairs filed its Impact Analysis stating that the proposed amendments will have no economic effect on small businesses. The Administrative Code Division of the Secretary of State's Office filed comments on February 11, 1988. Those comments have been incorporated into the Second Notice Order.

Pre-Fourth First Notice Comments

In the Fourth First Notice Order the Board stated:

> "The Board believes that the revisions may affect the continued applicability of the previously filed comments and requests further comment on these issues. For the sake of efficiency, the Board notes that comments need not be duplicated. Previous comments, if still applicable, may be incorporated by reference."

As noted above, only the Agency filed comments on the Fourth First Notice Order. Despite the Board's clear request for additional comment, none of the previous commenters opted to address the Fourth First Notice proposal. As the Board cannot and will not second-guess those commenters, the Board can only assume that the Fourth First Notice proposal does not meet with disapproval other than that noted by the Agency.

Third First Notice History

On August 14, 1986 the Board issued the Third First Notice Order in this Docket (R82-1(B)). The Board noted that several issues remained from the Fourth Second Notice Order and requested

comment on them. On October 2, 1986, the Administrative Code Division of the Secretary of States Office filed comments. On November 20, 1986, the Agency submitted a revised opacity proposal. The final hearing was held on November 24, 1986. Seven comments were filed between May, 1986 and February, 1987.

In the Third First Notice Order, the Board asked whether "Reasonable Time" in Section 212.124(c) (now renumbered to subsection (d)) should be defined. At hearing on November 24, 1986, the Agency suggested the language "a reasonable time not to exceed 60 days." This was the language proposed at Fourth First Notice. In reviewing previous comments, the Board determined that this language could be clarified further. The Board added "after written notification from the Agency of a violation" after "60 days." The Board takes this action consistent with the expressed intentions of the Agency. (Tr. 16, November 24, 1986).

In Third First Notice, the Board asked whether "similar operating conditions" should be defined. At hearing on November 24, 1986, the Agency agreed that "similar operating conditions" is vague. Further, the Agency noted that there might be similar operating conditions that would decrease mass emissions but not opacity. This, the Agency noted, could be viewed as a relaxation of the State Implementation Plan (SIP) without a demonstration that the National Ambient Air Quality Standards would not be jeopardized. The Agency proposed, therefore, to amend "similar" to "same." The Board did so at Fourth First Notice, and received no comment on this action. As the Board believes that the "same operating conditions" at the time of the violation is more definite than "similar operating conditions," the Board will retain the language as proposed at Fourth First Notice.

At Third First Notice, the Board asked whether levels of justification must be established under then Section 212.126(l) regarding how the factors of Section 27(a) of the Environmental Protection Act (Act) will be considered in deciding whether to adopt an adjusted standard. JCAR had indicated that such levels of justification were necessary. The Board notes that this subsection no longer exists in Part 212, rather a similar section was proposed in the Part 106 procedures for an adjusted standard. Section 106.507, requires the Board to adopt an opinion and order consistent with Section 27(a) of the Act. As the text of this Section was based on Section 106.416, already adopted and already past JCAR review, the Board does not anticipate any further problem with the language proposed at Fourth First Notice.

As previously noted, after Third First Notice, several comments were submitted on the proposed rules. As a result of changes made at hearing and thereafter, the Board believes that many concerns raised in the comments have been resolved. However, one of the commenters, the Illinois Power Company, took the position that

> "there is no statutory mandate that the Board adopt opacity as an independently enforceable air emission standard. Furthermore, there is no federal requirement under the Clean Air Act that the Illinois State Implementation Plan (SIP) contain an independently enforceable opacity standard. In any event, the Record does not support such a standard." (P.C. No. 42, filed February 19, 1987).

The Board does not agree. By Interim Order dated March 14, 1986, the Board noted that a letter was filed by Mr. Steve Rothblatt of United States Environmental Protection Agency (USEPA), indicating USEPA's position that the rule as then proposed were unapprovable. The Board stated that

> "these communications from USEPA place a cloud over the opacity rules: the state is required to comply with the Clean Air Act and regulations adopted thereunder, and USEPA's interpretation of its own rules must be given some deference."

Further, the Board set another hearing and requested testimony regarding the

> "legal requirements of the state implementation plan regarding visual emissions, what type or types of rules would or should be federally approvable, the adequacy of the present record to support the adoption of such rules ... ." (Interim Order, March 14, 1986, p. 2).

Hearing was held on April 28, 1986, at which William L. MacDowell testified on behalf of USEPA. It was Mr. MacDowell's testimony that Federal regulations, 40 CFR 51.19(c) (now codified at 40 CFR 51.212(b)) require enforceable visible emissions limitations in order to ensure that particulate control equipment is properly operated and maintained on a continuing basis. Mr. MacDowell offered much testimony to support the notion that opacity rules are federally required. Further, in its comments on the Fourth First Notice, (P.C. No. 44), the Agency submitted a letter dated November 6, 1987, from Mr. Michael Hayes, Manager of the the Division of Air Pollution Control, to Jacob Dumelle, Chairman of the Pollution Control Board. The letter notes that the previous First Notice in the rulemaking, R82-1(B), expired on September 5, 1987 and urges the Board to promptly promulgate opacity standards because it believes that such standards remain necessary. To support this belief, the Agency also submitted an Agency memorandum from Dan D'Auben to Susan Schroeder on the necessity issue. The memo states:

> "The State of Illinois will be submitting three types of PM_{10} SIP_s. The first, for Group I areas, may include new process and fugitive emission rules for sources in S.E. Chicago, S.W. Cook County, Oglesby, and Granite City. These areas, because of previous TSP monitoring, PM_{10} monitoring, or previous studies are presumed to not be in compliance with PM_{10} NAAQS. The second type of PM_{10} SIP (Group II) is for areas the compliance with the NAAQS is uncertain. The last type of PM_{10} SIP (Group III) is for areas that it is assumed that the TSP SIP is adequate to protect the PM_{10} NAAQS. This type of SIP would cover the majority of the State of Illinois. A major SIP requirement for Group II and III areas is that the TSP SIP must be viable and enforceable. This is required because it is assumed that the TSP emission regulations are adequate to protect the PM_{10} NAAQS. If an opacity rule is not promulgated for TSP (R82-1) we feel that the USEPA will hold that portions of our TSP SIP are unenforceable and therefore the PM_{10} SIP is not viable." (Agency's Fourth First Notice Comments, P.C. No. 44, filed February 26, 1988, Attachment 2).

The Board believes that the Record is sufficient to support the adoption of these opacity rules.

Fourth First Notice Comments and Revisions

The Agency commented that in proposed Section 212.124(d)(1) certain words were "mistakenly deleted from the Fourth First Notice" Order. The Board can only note that the language proposed to Section 212.124(d)(1) at Fourth First Notice was taken verbatim from the Final Agency Comments filed February 11, 1987, at page 5. The Board accepts the Agency's suggestion and has amended "Section 212.123" to become "Sections 212.122 and 212.123."

The Agency commented that Section 212.124(d)(2) contains a reference to Section 212.110. The Agency noted that it has proposed to change this particular provision in Board rulemaking R79-14 to the procedures of 35 Ill. Adm. Code 230, Appendix A (40 CFR 60, Method 5). Because R79-14 has not yet been sent to First Notice, this proceeding will most likely result in finalized regulations first. Therefore, the Board will include the amendment in this proceeding. However, because the Environmental Protection Act (Act) no longer authorizes the Board to

peremptorily amend 35 Ill. Adm. Code 230 and 231, the Board will cite directly to the Code of Federal Regulations for incorporation of procedures therein. As a result, "Section 212.110" is deleted and the following language is added to Sections 212.124(d)(2)(A) and (B): "Method 5, 40 CFR 60, incorporated by reference in Section 212.113."

The Agency suggested the following modifications of Section 212.126(c) and (e) for clarity:

> "Section 212.126(c): Any request for the determination of the average opacity of emissions shall be made in writing, including the time and place of the performance test, all test specifications and procedures, and submitted to the Agency at least thirty days before the proposed test date."
>
> "Section 212.126(e): The owner or operator shall allow Agency personnel to be present during the performance test."

The Board accepts the Section 212.126(e) suggestion. However, the Board believes that Section 212.126(c) requires further grammatical clarification. The Board thus amends Section 212.126(c) as follows:

> "Section 212.126(c): Any request for the determination of the average opacity of emissions shall be in writing, shall include the time and place of the performance test and all test specifications and procedures, and shall be submitted to the Agency at least thirty days before the proposed test date."

The Agency also noted its concerns regarding the Board's amendment of 35 Ill. Adm. Code 106.Subpart E: Air Adjusted Standard Procedures. The Agency states that although the general idea of a standardized procedure has merit, there are currently at least two regulations other than the opacity rules that contain important specialized procedures for obtaining an adjusted air standard. The Agency argues that these and all other existing specialized procedures should take precedence over a general air adjusted procedure. The Board does not dispute the Agency's arguments. However, the Board does believe that the general procedures for obtaining an adjusted standard should be located among the Board's procedural rules. Therefore, the Board will retain the 35 Ill. Adm. Code 106 amendments, but will make them applicable at this time only to the 35 Ill. Adm. Code 212. Subpart B rules. The Board is persuaded that there is insufficient information in the record to justify utilization of these rules for other existing specialized procedures. As future

adjusted standards provisions are adopted, these general procedures can be referred to and utilized.

In addition to providing comments regarding Part 106 procedures in general, the Agency commented on certain specific aspects of the Part 106 proposal. First, the Agency opposes a certain part of Section 106.503(b). The Agency states that it has "limited access to source information and limited procedures to enforce information gathering," and that "this section should not be construed as requiring the Agency to assist in the proof of the petition, as the Agency has the right to prioritize its use of resources to meet its statutory obligations under the Environmental Protection Act." The Board notes that Section 106.503(a) clearly and explicitly states "the Agency may, in its discretion, act as a co-petitioner." Thus, the Agency will not be required to assist in the proof of the petition.

The Agency further argues that "to require written notification of the Agency's position regarding whether or not it will be a co-petitioner and its underlying reasons is unnecessary and places an added burden on the Agency." In support of its argument, the Agency states that it and potential petitioners are "well aware" of the identity of each other and that "the Agency's position is clear from its pleadings and hearing participation." The Board notes that this requirement is not new to adjusted standard procedures. Similar requirements can be found in the RCRA adjusted standard procedures (35 Ill. Adm. Code 106.412) and in the CSO exception proceeding (35 Ill. Adm. Code 306.352(b)). Because this decision is discretionary (proposed Section 106.503(a)) and not appealable to the Board (proposed Section 106.503(c)), and because the Agency has expressed opposition to the requirement in this context, the Board has determined that a compromise is in order. The Board will retain the written notification requirement (1) to maintain consistency with the above-noted regulations and (2) to ensure that the applicant receives a prompt response. However, the Board believes that it is perfectly appropriate for the Agency to decline to co-petition in the event that the Agency is faced with a lack of resources with which to investigate and co-petition. Therefore, a simple statement to that effect is the minimum that would be required by Section 106.503(b).

The Agency states that in Section 106.504(b)(2) the written statement should be signed by only the petitioner and not the Agency, even if the Agency is a co-petitioner or approves of the proposed standard. The Agency argues that it cannot, from its own independent knowledge, verify all of the various elements that this written statement contemplates. The Board appreciates the Agency's concerns and has revised Section 106.504(b)(2) to require only the petitioner's signature.

As regards the Section 106.505 time for response to the filing of a petition, the Agency argued that twenty-one (21) days is too short. The Agency believes that a minimum of forty-five (45) days is necessary for an effective evaluation. In the absence of any evidence to the contrary, the Board defers to the Agency's knowledge of its internal processes, and accepts the forty-five (45) day response period.

In addition, the Board has made certain clarifications to the text of the proposed rules on its own. These changes are in no way intended to affect the substance of the proposed rules, but rather are intended to make the language of the rules more precise. First, in Section 212.214(d)(1), the Board removed "and either" and replaced it with "but subject to." This action was taken to correct the internal logic of the subsection.

Second, the Board notes that Section 212.214(d)(1) and (2) are defense provisions for different types of sources. Section 212.214(d)(1) is applicable to sources not subject to Sections 212.201 through 212.204, but subject to 212.122 or 212.123. The Board has added language to clarify that Section 212.124(d)(1) does not apply to sources subject to New Source Performance Standards, i.e., subject to Section 111 or 112 of the Clean Air Act. Section 212.124(d)(2) is applicable to sources subject to Section 212.201 through 212.204 and either 212.122 or 212.123. Language was added here also to clarify that Section 212.124(d)(2) does not apply to sources subject to New Source Performance Standards. The difference between Section 212.124(d)(1) and (2) lies in the defense mechanism. Section 212.124(d)(2)(A) and (B) state:

> A) An exceedance of the limitations of Section 212.122 or 212.123 shall constitute a violation of the applicable particulate limitations of this Part. It shall be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions for the source and the control device(s), and in accordance with Method 5, 40 CFR 60, incorporated by reference in Section 212.113, the owner or operator shows that the source is in compliance with the particulate emission limitations.
>
> B) It shall be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days,

> under the same operating conditions of the source and the control device(s), and in accordance with Method 5, 40 CFR 60, incorporated by reference in Section 212.113, the owner or operator shows that the source is in compliance with the allowable particulate emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.

Section 212.124(d)(1) states

> "The opacity limitations of Sections 212.122 and 212.123 shall not apply if it is shown that the emission source was, at the time of such emission, in compliance with the applicable particulate emissions limitations of this Part."

One reason for the different defense provision between these two subsections is that the performance test conducted in accordance with Test Method 5, 40 CFR 60, Appendix A, is clearly designed for accurate measurement of stack particulate emissions from sources subject to Sections 212.201 through 212.204 (i.e. Section 212.124(d)(2)), while for other sources, e.g., process emission sources, Method 5 may not be applicable because such sources (1) may not have a stack or (2) may be allowed to use other methods in lieu of the stack test to show compliance. However, the lack in Section 212.124(d)(1) of specific defense requirements, i.e., subsequent performance test, under same operating conditions, while having visible emissions greater than or equal to the opacity exceedance originally observed, is in no way intended to imply that those showings would not be appropriate to a demonstration of compliance with the particulate emission limitations. In fact, such showings (as prescribed under Section 212.124(d)(2)) would be the preferred method of demonstrating compliance under Section 212.124(d)(1).

Third, subsection 212.124(a) was amended to include exceptions for times of malfunction and breakdown, in addition to start-up. This was suggested in comment previously received. The commentor stated that 35 Ill. Adm. Code 201.Subpart I allows for permission to be granted to operate during any of these three events. The commentor pointed out that, to be consistent, Section 212.214(a) should include exception for malfunction and breakdown. The Board agrees and has added the exceptions at Second Notice.

Fourth, the Board agrees with the Agency's comments and will retain the upper limit of 60% in the adjusted opacity

standards. The Board also notes that sources obtaining an adjusted opacity limit pursuant to 212.121(a)(6) are allowed to exceed the standard for one six-minute averaging period in any 60-minute period rather than pursuant to the exception in existing Sections 212.122 and 212.123. The adjusted opacity limitation exception contained in Section 212.126(a)(4) is consistent with the measurement methods of Method 9, 40 CFR 60, Appendix A.

Second Notice Review

The Second Notice Opinion and Order was adopted on May 5, 1988. The Joint Committee on Administrative Rules considered the proposed rules at its June 14, 1988 Meeting. On that date, the Joint Committee issued a Certificate of No Objection to the proposed amendments to 35 Ill. Adm. Code 212. Pursuant to discussions with the Joint Committee, the Board agreed to make certain non-substantive language changes to clarify the intent of the rules. Those changes are noted below. Also on June 14, 1988, the Joint Committee issued a Certificate of Objection to the rules proposed for inclusion into 35 Ill. Adm. Code 106. By separate Resolution and Order, also adopted today, the Board set forth its formal response to the JCAR Objection refusing to modify or withdraw the proposed rules.

Pursuant to second notice review discussions with the Joint Committee, the Board agreed to make the following non-substantive modifications to the proposed rules:

35 Ill. Adm. Code 106:

1. To amend Section 106.505(a), the last sentence to read: "This response shall include the Agency's recommendations concerning the Board's proposed action on the petition."

2. To add a citation to Section 28.1 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1028.1) after Sections 106.507(c) and (d).

3. To update its statutory citations to the 1987 Illinois Revised Statutes.

35 Ill. Adm. Code 212:

1. To insert "Subparts D-T of" in Sections 212.124(d)(1) and 212.124(d)(2)(A) after "applicable particulate emission limitations."

2. To insert "of Sections 212.121-212.125" after "otherwise applicable standards" in Section 212.126(a).

3. To replace the word "may" with "shall" in Section 212.126(b) so the last sentence of the Section reads: "The Agency shall refuse to accept the results of emissions tests if not conducted pursuant to this Section which are conducted without prior review and approval of the test specifications and procedures by the Agency."

4. To replace the word "devise(s)" with "device(s)" in Section 212.124(d)(2)(A).

5. To update the "Statutory Authority" citation to "1987" in the Authority Note.

Economic Impact of Proposed Rules

Finally, the Board notes that the existing Opacity regulations were declared invalid as they applied to sources regulated by the Particulate rules in Celotex Corp. v. Pollution Control Board, 94 Ill. 2d 107, 445 N.E.2d 752, 68 Ill. Dec. 108 (1983). The basis for the invalid declaration was that in adopting the Opacity regulations, the Board had relied on the economic reasonableness justification provided in the adoption of the Particulate rules [formerly Rule 203(g)(1)]. Because the Particulate rules were declared invalid based on a failure to consider economic reasonableness in Commonwealth Edison Company v. Pollution Control Board, 25 Ill. App. 3d 271, 323 N.E.2d 84 (1975), the Supreme Court ruled in Celotex that the Opacity rules were also invalid. Subsequent to that holding, the Board revalidated the Particulates rules. Analysis of the economic reasonableness is set forth in the Final Opinion and Order dated July 2, 1986 in R82-1 (Docket A). There the Board stated in part:

> The Executive Summary of the Economic Impact Study (EcIS) in this matter concludes:
>
> > Because so few sources remain out-of-compliance, repromulgation of rules 203(g)(1) and 202(b) is not expected to impact very noticeably on the Illinois economy. Hence Board approval of R82-1 should have little effect on the overall availability of goods and services to the people of the state, nor should it have much impact on agriculture, local government, commerce or industry. Of course, if the avoidance of nearly $400 million in Clean Air Act penalties is assumed to result from revalidation,

> then it follows that all of those sectors will experience a significant benefit in the form of averted funding losses and the associated secondary effects. (Ex. 10, p. vi).

The reason for such widespread compliance with invalid Rule 203(g)(1) is that the Agency, in its permitting process, has acted almost as though the rules had never been invalidated. Despite the fact that the Agency no longer had valid rules on which to base permitted levels of particulate emissions, it established a policy, which it filed with the Secretary of State's Office in December of 1977, stating that compliance with 203(g)(1) still would "usually be deemed ... sufficient to assure compliance with air quality provisions ... of the Act." According to these guidelines, a plant may obtain a permit by either demonstrating compliance with the remanded rules or by performing comprehensive air quality evaluations to demonstrate that alternative emissions' limitations would not threaten air quality standards. Since this policy has been in effect, only the Winnetka Electric Plant has been granted an alternative standard.

The EcIS proceeded on the assumption that "repromulgation is assumed to have no impact on those sources already in compliance." (Ex. 10, p. 14). It, therefore, discusses costs imposed on those facilities which have not achieved compliance, those which are presently permitted to emit as much as 0.2 lbs/MBtu under 203(g)(1)(C) but which will ultimately be required to comply with a stricter limitation, the Winnetka plant which is operating under a relaxed limitation, and new sources. (Ex. 10, pp. 16-18). Of the 30 sources which are not presently in compliance, 12 operate routinely, 9 are used on a standby basis and none are shut down. (Ex. 10, p. 53). Eleven are in non-attainment areas for particulates; five are in attainment areas. (Ex. 10, pp. 53-56).

The authors of the EcIS admit that assigning an economic value to the costs and benefits involved in this proceeding is difficult. On

the cost side, errors arise from choosing an emission reduction strategy. The study assumed the use of fabric filters or cyclones resulting in an annualized cost of control for the affected sources of about $4.4 million in 1982 dollars with a range of error of about 50 percent. However, some of the 30 sources impacted by repromulgation have shut down within the past five years and many, if not most, may never operate again, regardless of the Board's ruling in this matter. Further, an equal number of sources are used as emergency standby units, which operators may choose to retire. Thus, only 12 sources which are out-of-compliance with the remanded rules operate on a routine basis, with an annualized control cost of about $4.42 million, most of which is attributable to CILO's Wallace Station.

The benefits of repromulgation are also subject to considerable uncertainty, especially in the estimation of reduced damages to health and welfare. Dispersion modeling indicates that in all but three locations, promulgation of the proposed rules will reduce ambient TSP concentrations by less than 1 ug/m^3. The estimated health and welfare benefits are $73,000 per year in 1982 dollars, although that figure must be regarded as a lower limit since only those impacts greater than 1 ug were evaluated. Significant errors may arise for uncertainties in the damage coefficients themselves which are based on the work of Dr. Allen Cohen who has conceded that they could offer no better than "order of magnitude" accuracy: i.e. they could vary by a factor of ten.

Potentially overriding any of these costs or benefits is the impact which would result from a decision by the Administrator of USEPA to impose the Clean Air Act's sweeping penalties. The deficiency in Illinois' SIP due to judicial remand is cause for the sanctions. Illinois' inability to show attainment with TSP air quality standards exposes the State to a possible annual loss of up to $335 million in highway funds, $35 million in sewage treatment grants, and nearly $12 million in Agency operating funds per year. In that case the benefits of revalidation clearly outweigh the costs.

Based on this analysis and on the absence of any indication in the record that these rules are not economically reasonable, the Board concludes that it is economically reasonable to comply with the underlying Opacity rules as well as today's adopted rules.

ORDER

The Board hereby adopts the following amendments to the Illinois Administrative Code:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106
HEARINGS PURSUANT TO SPECIFIC RULES

SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

Section
106.101 Petition
106.102 Requirements for Petition
106.103 Parties
106.104 Recommendation
106.105 Notice and Hearing
106.106 Transcripts
106.107 Opinion and Order

SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

Section
106.201 Petition
106.202 Notice and Hearing
106.203 Transcripts
106.204 Effective Date

SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

Section
106.301 Petition
106.302 Requirements for Petition
106.303 Parties
106.304 Recommendation
106.305 Notice and Hearing
106.306 Transcripts

SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section
106.401 Petition (Repealed)

106.402 Notice of Petition (Repealed)
106.403 Recommendation (Repealed)
106.404 Response (Repealed)
106.405 Public Comment (Repealed)
106.406 Public Hearings (Repealed)
106.407 Decision (Repealed)
106.408 Appeal (Repealed)
106.410 Scope and Applicability
106.411 Joint or Single Petition
106.412 Request to Agency to Join as Co-Petitioner
106.413 Contents of Petition
106.414 Response and Reply
106.415 Notice and Conduct of Hearing
106.416 Opinions and Orders

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section
106.501 Scope and Applicability
106.502 Joint or Single Petition
106.503 Request to Agency to Join As Co-Petitioner
106.504 Contents of Petition
106.505 Response and Reply
106.506 Notice and Conduct of Hearing
106.507 Opinions and Orders

Appendix A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 22.4, 27, 28 and 28.1 and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111½, pars. 1005, 1022.4, 1027, 1028, 1028.1 and 1026).

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, page 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at _____ Ill. Reg. _____ , effective _____.

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section 106.501 Scope and Applicability

This Subpart applies only whenever an adjusted standard, as provided in Section 28.1 of the Environmental Protection Act (Act), is sought pursuant to 35 Ill. Adm. Code 212.126.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 106.502 Joint or Single Petition

A person may initiate an adjusted standard proceeding either by filing a petition jointly with the Illinois Environmental Protection Agency (Agency), or by filing a petition singly.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 106.503 Request to Agency to Join As Co-Petitioner

a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.

b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall promptly notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.

c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 106.504 Contents of Petition

a) The petitioner shall file ten copies of the petition for adjusted standard with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.

b) The petition shall contain the following information:

1) Identification of the regulation of general applicability for which an adjusted standard is sought;

2) A written statement, signed by the petitioner, or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the adjusted standard, consistent with the level of justification contained in the regulation of general applicability;

3) The nature of the petitioner's operations and control equipment; and

4) Any additional information which may be required in the regulation of general applicability.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 106.505 Response and Reply

a) Within 45 days after the filing of a petition, the Agency shall file a response to any petition in which it has not joined as a co-petitioner. This response shall include the Agency's recommendations concerning the Board's proposed action on the petition.

b) The petitioner may file a reply within 14 days after the filing of any Agency response.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 106.506 Notice and Conduct of Hearing

a) The Board will hold at least one public hearing prior to granting an adjusted standard.

b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 102.122.

c) The proceedings will be in accordance with 35 Ill. Adm. Code 102.160 through 102.164.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Section 106.507 Opinions and Orders

a) The Board will adopt an order and opinion stating the facts and reasons leading to the final Board determination, consistent with any considerations which may be specified in the regulation of general applicability or Section 27(a) of the Act.

b) The Board will issue such other orders as the Board deems appropriate, including, but not limited to, accepting or rejecting the petition, requiring the submission of further information or directing that further hearings be held.

c) SUCH BOARD ORDERS AND OPINIONS WILL BE MAINTAINED FOR PUBLIC INSPECTION BY THE CLERK OF THE BOARD AND A LISTING OF ALL DETERMINATIONS MADE PURSUANT TO THIS SUBPART WILL BE PUBLISHED IN THE ILLINOIS REGISTER AND THE ENVIRONMENTAL REGISTER AT THE END OF EACH FISCAL YEAR. (Ill. Rev. Stat. ch. 111 1/2 par. 1028.1).

d) A FINAL BOARD DETERMINATION MADE UNDER THIS SUBPART MAY BE APPEALED PURSUANT TO SECTION 41 OF THE ACT. (Ill. Rev. Stat. ch. 111 1/2 par. 1028.1).

(Source: Added at ____ Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 212
~~VISUAL~~ VISIBLE AND PARTICULATE MATTER EMISSIONS

SUBPART A: GENERAL

Section
212.100 Scope and Organization
212.110 Measurement Methods
212.111 Abbreviations and Units
212.112 Definitions
212.113 Incorporations by Reference

SUBPART B: ~~VISUAL~~ VISIBLE EMISSIONS

Section
212.121 Opacity Standards
212.122 Limitations for Certain New Sources
212.123 Limitations for All Other Sources
212.124 Exceptions
212.125 Determination of Violations
212.126 Adjusted Opacity Standards Procedures

SUBPART D: PARTICULATE MATTER EMISSIONS FROM INCINERATORS

Section
212.181 Limitations for Incinerators
212.182 Aqueous Waste Incinerators
212.183 Certain Wood Waste Incinerators
212.184 Explosive Waste Incinerators

SUBPART E: PARTICULATE MATTER EMISSIONS FROM FUEL COMBUSTION EMISSION SOURCES

Section
212.201 Existing Sources Using Solid Fuel Exclusively Located in the Chicago Area
212.202 Existing Sources Using Solid Fuel Exclusively Located Outside the Chicago Area
212.203 Existing Controlled Sources Using Solid Fuel Exclusively

SUBPART K: FUGITIVE PARTICULATE MATTER

SUBPART L: PARTICULATE MATTER EMISSIONS FROM PROCESS EMISSION SOURCES

SUBPART N: FOOD MANUFACTURING

SUBPART O: PETROLEUM REFINING, PETROCHEMICAL AND CHEMICAL MANUFACTURING

SUBPART Q: STONE, CLAY, GLASS AND CONCRETE MANUFACTURING

SUBPART R: PRIMARY AND FABRICATED METAL PRODUCTS AND MACHINERY MANUFACTURE

SUBPART S: AGRICULTURE

SUBPART T: CONSTRUCTION AND WOOD PRODUCTS

AUTHORITY: Implementing Section 10 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1010 and 1027)

SOURCE: Adopted as Chapter 2: Air Pollution, Rules 202 and 203: Visual and Particulate Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-15, 32 PCB 403, at 3 Ill. Reg. 5, p. 798, effective February 3, 1979; amended in R78-10, 35 PCB 347, at 3 Ill. Reg. 39, p. 184, effective September 28, 1979; amended in R78-11, 35 PCB 505, at 3 Ill. Reg. 45, p. 100, effective October 26, 1979; amended in R78-9, 38 PCB 411, at 4 Ill. Reg. 24, p. 514,

effective June 4, 1980; amended in R79-11, 43 PCB 481, at 5 Ill. Reg. 11590, effective October 19, 1981; codified at 7 Ill. Reg. 13591; amended in R82-1 (Docket A) at 10 Ill. Reg. 12637, effective July 9, 1986; amended in R85-33 at 10 Ill. Reg. 18030, effective October 7, 1986; amended in R84-48 at 10 Ill. Reg. 691, effective December 18, 1986; amended in R84-42 at 11 Ill. Reg. 1410, effective December 30, 1986; amended in R82-1(Docket B) at ____ Ill. Reg. _____, effective _____

Section 212.113 Incorporations by Reference

The following materials are incorporated by reference:

a) ASME Power Test Code 27-1957, Determining Dust Concentration in a Gas Stream, American Society of Mechanical Engineers, United Engineering Center, 345 E. 47th Street, New York, NY 10017.

b) Ringelmann Chart, Information Circular 833 (Revision of IC7718), Bureau of Mines, U.S. Department of Interior, May 1, 1967.

c) 40 CFR 60~~, Appendix A, 42 Fed. Reg. 41,754 (August 18, 1977)~~. (1987)

d) ASAE Standard 248.2, Section 9, Basis for Stating Drying Capacity of Batch and Continuous-Flow Grain Dryers, American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085.

e) U.S. Sieve Series, ASTM-E11, American Society of Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

f) This Part incorporates no future editions or amendments.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 212.121 Opacity Standards

For the purposes of this Subpart, all ~~visual~~ visible emission opacity standards and limitations shall be considered equivalent to corresponding Ringelmann Chart readings, as described under the definition of opacity (35 Ill. Adm. Code 211.122).

~~(Board Note: This Subpart as it applies to sources regulated by Subpart E has been ruled invalid by the Illinois Supreme Court, Celotex v. IPCB et al. 68 Ill. Dec. 108, 445 N.E.2d 752.)~~

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 212.123 Limitations for All Other Sources

a) No person shall cause or allow the emission of smoke or other particulate matter, ~~from any other emission source into the atmosphere of~~ with an opacity greater than 30 percent, into the atmosphere from any emission source other than those sources subject to Section 212.122.

b) Exception: The emission of smoke or other particulate matter from any such emission source may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such more opaque emissions permitted during any 60 minute period shall occur from only one such emission source located within a 305 m (1000 ft) radius from the center point of any other such emission source owned or operated by such person, and provided further that such more opaque emissions permitted from each such emission source shall be limited to 3 times in any 24 hour period.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 212.124 Exceptions

a) Startup, Malfunction and Breakdown. Sections 212.122 and 212.123 shall apply during times of startup, malfunction and breakdown except as provided in the operating permit granted in accordance with 35 Ill. Adm. Code 201.

b) Emissions of water and water vapor. Sections 212.122 and 212.123 shall not apply to emissions of water or water vapor from an emission source.

c) Adjusted standards. An emission source which has obtained an adjusted opacity standard pursuant to Section 212.126 shall be subject to that standard rather than the limitations of Section 212.122 or 212.123.

de) Compliance with the particulate regulations of this Part shall constitute a defense.

1) For all emission sources which are not subject to Chapters 111 or 112 of the Clean Air Act and Sections 212.201, 212.202, 212.203 or 212.204 but which are subject to Sections 212.122 or 212.123:

The opacity limitations of Sections 212.122 and 212.123 shall not apply if it is shown that the emission source was, at the time of

such emission, in compliance with the applicable particulate emissions limitations of Subparts D-T of this Part.

2) For all emission sources which are not subject to Chapters 111 or 112 of the Clean Air Act but which are subject to Sections 212.201, 212.202, 212.203 or 212.204 and either Section 212.122 or 212.123:

A) An exceedance of the limitations of Section 212.122 or 212.123 shall constitute a violation of the applicable particulate limitations of Subparts D-T of this Part. It shall be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions for the source and the control device(s), and in accordance with Method 5, 40 CFR 60, incorporated by reference in Section 212.113, the owner or operator shows that the source is in compliance with the particulate emission limitations.

B) It shall be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions of the source and the control device(s), and in accordance with Method 5, 40 CFR 60, Appendix A, incorporated by reference in Section 212.113, the owner or operator shows that the source is in compliance with the allowable particulate emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 212.126 Adjusted Opacity Standards Procedures

a) Pursuant to Section 28.1 of the Act, and in accordance with 35 Ill. Adm. Code 106.Subpart E, adjusted visible emissions standards for emission sources subject to Sections 212.201, 212.202, 212.203, or 212.204 and either Section 212.122 or 212.123 shall be granted by the Board to the extent consistent with federal law based upon a demonstration by such a source that the

results of a performance test conducted pursuant to this Section, Section 212.110, and Methods 5 and 9 of 40 CFR 60, Appendix A, incorporated by reference in Section 212.113, show that the source meets the applicable particulate emission limitations at the same time that the visible emissions exceed the otherwise applicable standards of Sections 212.121-212.125. Such adjusted opacity limitations:

1) Shall be specified as a condition in operating permits issued pursuant to 35 Ill. Adm. Code 201;

2) Shall substitute for that limitation otherwise applicable;

3) Shall not allow an opacity greater than 60 percent at any time; and

4) Shall allow opacity for one six-minute averaging period in any 60 minute period to exceed the adjusted opacity standard.

b) For the purpose of establishing an adjusted opacity standard, any owner or operator of an emission source which meets the requirements of subsection (a), above, may request the Agency to determine the average opacity of the emissions from the emission source during any performance test(s) conducted pursuant to Section 212.110 and Methods 5 and 9 of 40 CFR 60, Appendix A, incorporated by reference in Section 212.113. The Agency shall refuse to accept the results of emissions tests if not conducted pursuant to this Section.

c) Any request for the determination of the average opacity of emissions shall be made in writing, shall include the time and place of the performance test and test specifications and procedures, and shall be submitted to the Agency at least thirty days before the proposed test date.

d) The Agency will advise the owner or operator of an emission source which has requested an opacity determination of any deficiencies in the proposed test specifications and procedures as expeditiously as practicable but no later than 10 days prior to the proposed test date so as to minimize any disruption of the proposed testing schedule.

e) The owner or operator shall allow Agency personnel to be present during the performance test.

f) The method for determining an adjusted opacity standard is as follows:

1) A minimum of 60 consecutive minutes of opacity readings obtained in accordance with USEPA Test Method 9, 40 CFR 60, Appendix A, incorporated by reference in Section 212.113, shall be taken during each sampling run. Therefore, for each performance test (which normally consists of three sampling runs), a total of three sets of opacity readings totaling three hours or more shall be obtained. Concurrently, the particulate emissions data from three sampling runs obtained in accordance with USEPA Test Method 5, 40 CFR 60, Appendix A, incorporated by reference in Section 212.113, shall also be obtained.

2) After the results of the performance tests are received from the emission source, the status of compliance with the applicable particulate emissions limitation shall be determined by the Agency. In accordance with USEPA Test Method 5, 40 CFR 60, Appendix A, incorporated by reference in Section 212.113, the average of the results of the three sampling runs must be less than the allowable particulate emission rate in order for the source to be considered in compliance. If compliance is demonstrated, then only those test runs with results which are less than the allowable particulate emission rate shall be considered as acceptable test runs for the purpose of establishing an adjusted opacity standard.

3) The opacity readings for each acceptable sampling run shall be divided into sets of 24 consecutive readings. The 6-minute average opacity for each set shall be determined by dividing the sum of the 24 readings within each set by 24.

4) The second highest six-minute average opacity obtained in (f)(3) above shall be selected as the adjusted opacity standard.

g) The owner or operator shall submit a written report of the results of the performance test to the Agency at least 30 days prior to filing a petition for an adjusted standard with the Board.

h) If, upon review of such owner's or operator's written report of the results of the performance test(s), the Agency determines that the emission source is in compliance with all applicable emission limitations for

which the performance tests were conducted, but fails to comply with the requirements of Section 212.122 or 212.123, the Agency shall notify the owner or operator as expeditiously as practicable, but no later than 20 days after receiving the written report of any deficiencies in the results of the performance tests.

i) The owner or operator may petition the Board for an adjusted visible emission standard pursuant to 35 Ill. Adm. Code 106.Subpart E. In addition to the requirements of 35 Ill. Adm. Code 106.Supart E the petition shall include the following information:

1) A description of the business or activity of the petitioner, including its location and relevant pollution control equipment;

2) The quantity and type of materials discharged from the source or control equipment for which the adjusted standard is requested;

3) A copy of any correspondence between the petitioner and the Agency regarding the performance test(s) which form the basis of the adjusted standard request;

4) A copy of the written report submitted to the Agency pursuant to subsection (g) above;

5) A statement that the performance test(s) were conducted in accordance with this Section and the conditions and procedures accepted by the Agency pursuant to Section 212.110;

6) A statement regarding the specific limitation requested; and

7) A statement as to whether the Agency has sent notice of deficiencies in the results of the performance test pursuant to subsection (h) above and a copy of said notice.

j) In order to qualify for an adjusted standard the owner or operator must justify as follows:

1) That the performance test(s) were conducted in accordance with USEPA Test Methods 5 and 9, 40 CFR 60, Appendix A, incorporated by reference in Section 212.113, and the conditions and procedures accepted by the Agency pursuant to Section 212.110;

2) That the emission source and associated air pollution control equipment were operated and maintained in a manner so as to minimize the

opacity of the emissions during the performance test(s); and

3) That the proposed adjusted opacity standard was determined in accordance with subsection (f).

k) Nothing in this Section shall prevent any person from initiating or participating in a rulemaking, variance, or permit appeal proceeding before the Board.

(Source: Added at ____ Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Board Member B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30th day of June, 1988 by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

RECEIVED
JUL 05 1988
Air & Radiation Branch
U.S. EPA Region V

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1988

IN THE MATTER OF:	)	
	)	
PARTICULATE EMISSION LIMITATIONS, RULE 203(g)(1) AND 202(b) OF CHAPTER 2	)	RES 88-2 R82-1(B)

RESOLUTION IN RESPONSE TO JCAR OBJECTION.

RESOLUTION AND ORDER OF THE BOARD (by J.D. Dumelle):

This Resolution and Order constitutes the Pollution Control Board's (Board) formal response to the June 14, 1988 Objection of the Joint Committee on Administrative Rules (JCAR). Section 7.06(c) of the Administrative Procedure Act (APA) requires that an Agency respond within 90 days of an Objection. Section 7.06(c) of the APA states that, an Agency may (1) modify the proposed rule or amendment to meet the Joint Committee's Objection, (2) withdraw the proposed rule or amendment in its entirety or (3) refuse to modify or withdraw the proposed rule or amendment. For the reasons set forth below, the Board hereby refuses to modify or withdraw the proposed rules.

The JCAR objection reads, in pertinent part, as follows:

> The Joint committee objects to the Pollution Control Board's rules entitled Hearing Pursuant to Specific Rules, "35 Ill. Adm. Code 106, because contrary to Section 28.1 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1028.1) the Board has issued adjusted standards pursuant to Section 28.1 and published the list of those adjusted standards in the Environmental Register but has failed to publish lists of the adjusted standards in the Illinois Register.

The Board strongly disagrees with the JCAR Objection. First, the rationale for the Objection is unrelated to the proposed rules which were before JCAR for second notice review. The proposed rules set forth procedures to be utilized whenever an adjusted standard is sought under 35 Ill. Adm. Code 212.126. The Joint Committee has no objection to the language or content of the proposed rules; however, it finds the rules objectionable because the Board allegedly has not in past years published lists of adjusted standard determinations, in the Illinois Register. The Board can only note that it has not as yet rendered any adjusted standard determination pursuant to Section 28.1 of the

Act: when the Board adopts adjusted standard determinations under Section 28.1 of the Act, a list of those determinations will be published in the Illinois Register.

Second, the fact that the Board has not yet adopted any adjusted standard determination pursuant to Section 28.1 was conveyed to the Joint Committee. The Board offered to make any modification necessary to satisfy the Joint Committee and thus to avoid the Objection, but (1) the Joint Committee was unable to suggest any such modification and (2) no modification exists that can correct the Joint Committee's perceived problem. The Board notes that modification pursuant to Section 7.06 of the APA is thus not a practical response to the Objection: the Board is effectively precluded from utilizing this type of response. Nor can the Board in good conscience utilize the withdrawal type of response. These rules are necessary for federal approval of the state implementation plan and, moreover, provide flexibility to sources that cannot comply with the general rules. Thus, withdrawal of the rules would be contrary to the best interests of the state.

The Board does not take a Joint Committee Objection lightly. Section 7.06 of the APA sets forth the universe of possible Board responses. As neither modification nor withdrawal of the proposed rules are practical responses to the Objection, the Board's only recourse is to refuse to modify (although that is not an accurate statement) or withdraw the proposed rules. The Board regrets that this is the case, but believes that it is in the best interests of the state to do so.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Resolution was adopted on the 30th day of June, 1988 by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board